

**Y Tribiwnlys Eiddo Preswyl**  
**Residential Property Tribunal Service (Wales)**  
**Leasehold Valuation Tribunal (Wales)**

Welsh Tribunals Unit, Oak House, Cleppa Park, Celtic Springs, Newport, NP10 8BD  
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**DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL**  
**Landlord and Tenant Act, s.20ZA**

**Premises:** Flats 1-3 Cardiff Road, Llandaff, Cardiff CF52AA (“the premises”)

**RPT ref:** LVT/0044/11/19

**Applicant:** **Marguerite Anne Edmunds**  
Represented by: Richard Thomas Solicitors

**Respondent:** **Bryan Newell**  
Appeared in person

**Tribunal:** Mr JE Shepherd – Judge Chairman  
Mr Roger Baynham FRICS - Surveyor member  
Dr Angie Ash - Lay Member

**Hearing:** 31<sup>st</sup> July 2020 by remote cloud video platform.

**Order:**

The Applicant is given dispensation pursuant to s.20ZA. The dispensation is strictly limited to the works proposed in the application namely rebuilding the roof, rebuilding the rear wall, make safe existing building, renew walls, damaged brickwork and replace where required, renew sills and doors, replace windows with new hardwood frames, remove staircase and replace in common area, renew and replace water, mechanical and electrical installation and replace existing damaged floors and ceilings. The Applicant is also given dispensation to carry out all remedial works

required to reinstate the Respondent's home at Flat 1, 73 Cardiff Road, Llandaff, Cardiff, CF5 2AA to the condition it was in before the Applicant's husband removed the rear wall and roof without proper consultation or justification. The dispensation is made conditional on the Applicant not seeking to recover any sums from the Respondent for the works in the application or the reinstatement of his home.

## **Background**

1. This is a remarkable case. The historic facts were set out in the Tribunal's decision in LVT/0045/02/19 AND LVT/0046/02/19. In that case the Applicant had sought to recover sums from the Respondent for various works at 73 Cardiff Road, Llandaff, Cardiff, CF5 2AA (The Building). The Respondent is the leaseholder in Flat 1 ("The premises"). The Applicant is the freeholder although her husband is the real operating force.
2. In LVT/0045/02/19 AND LVT/0046/02/19 the Tribunal decided that the Respondent owed no sums to the Applicant. The sums sought related to the cost of removing the rear wall of the building and the prospective costs of carrying out works to the building contained in a quote by a firm called Litespeed. The Tribunal decided the following:
  - a) The wall works were not justified and should not have been carried out. Accordingly it was not reasonable to incur any sums in carrying them out.
  - b) There was no genuine intention at the date of the service charge demand to carry out the works in the original Litespeed quote. Instead Mr Edmunds was intending to redevelop the building in accordance with the planning application. In these circumstances the sums claimed are not reasonable.
3. In view of the Tribunal's findings it was not necessary to address the issue of dispensation in that case but the Tribunal commented that in relation to the wall works it would not have granted dispensation because the Respondent suffered prejudice by the failure to properly consult. If the consultation had been properly pursued, he would have had the opportunity to put forward his contrary evidence in relation to the stability of the wall. Further no application was made by Mr Edmunds for dispensation before the wall was removed.

## **The current application**

4. The current application for dispensation follows on from the previous Tribunal decision. Broadly, the Applicant seeks to render the building wind and watertight by making good the damage that her husband caused by wrongly removing the rear wall and roof to the building. The works in the application are listed in the order above. These are the only works that the Tribunal considered. The Applicant opportunistically sought to widen the scope of the works to again include development works including the installation of lifts etc. These were not part of the application and were not considered for dispensation. It remains

unclear why despite the passage of time since the last Tribunal decision the Applicant had not sought to consult.

5. The application was listed for hearing on 5<sup>th</sup> March 2020. The parties appeared cooperative with each other at that stage. The Tribunal made the following order:
  1. The parties shall agree a schedule of proposed works and a timescale for the proposed works by 23<sup>rd</sup> March 2020.
  2. If the parties agree the schedule of works and the timescale for the works they are invited to submit a consent order agreeing to dispensation from consultation pursuant to Landlord and Tenant Act 1985,s.20ZA together with the agreed schedule of works and timescale on or before 4 pm on 24<sup>th</sup> March 2020.
  3. If the parties fail to reach agreement they shall submit to the Tribunal by 4 pm on 25<sup>th</sup> March 2020 the proposed schedule of works and timescale together with a list of objections or proposed alterations.
  4. The Tribunal shall reconvene on 30<sup>th</sup> March 2020 at 10 am with a time estimate of one day if the parties have failed to reach agreement as above.
6. Covid 19 intervened and there was a considerable delay before the matter was heard virtually on 31<sup>st</sup> July 2020. The parties had not agreed a schedule of works. The Respondent had put forward remedial works required to his flat. These had not been agreed by the Applicant. On the evening before the hearing the Tribunal was informed for the first time that the registered leasehold ownership of Flats 2 and 3 had passed to a third party on 14<sup>th</sup> February 2020. The intricacies of this are not relevant to the Application. Suffice to say that they relate to Lawrence Edmunds' bankruptcy. On 19<sup>th</sup> January 2018 the court granted possession of flats 2 and 3 to Unicom Holdings LLC. The Applicant's solicitors Richard Thomas Solicitors were acting for the Applicant and her husband in those proceedings. It is astounding that the Tribunal were not informed of this before. The Applicant's solicitors sought during the hearing to excuse this but the Tribunal consider that these excuses rang hollow. It was patently relevant to the proceedings in LVT/0045/02/19 AND LVT/0046/02/19 that a third party had an interest in the building. The fact that the interest had not been registered with the Land Registry until 14<sup>th</sup> February 2020 should not have precluded the solicitors from informing the Tribunal of the change of ownership. In any event the Respondent contacted Glanmor Blunt of Unicom Holdings who confirmed that he had no interest in being involved in the current application.
7. The Tribunal were sent schedules of work from both parties. The Respondent's schedule largely related to the reinstatement of his flat following the removal of the rear wall and roof of the building. At the hearing on 5<sup>th</sup> March 2020 the solicitor acting on behalf of the Applicant, Claire Richards, informed the Tribunal that her client would not seek to recover any sums from the Respondent for the proposed works which included the reinstatement of Flat 1. At the hearing on

31<sup>st</sup> July 2020 she sought to withdraw from this position referring to potential recovery in relation to pointing works to the brickwork.

8. For her part the Applicant submitted a schedule with three alternatives for the replacement wall in early June. None of these proposals were expanded upon during the hearing and it was not explained how they related to the application.
9. During the hearing it became clear that the remedial works at the building had already commenced. This was despite the fact that the Applicant had made the current application. If the Applicant was going to continue with the works regardless, why make the application for dispensation? It is plain that the building needs to be made wind and weather-tight and that the Respondent's flat needs to be reinstated to the state it was in before the Applicant's husband removed the wall and roof. Nevertheless, it made a mockery of the Tribunal process for the Applicant to instruct builders to start the work when no dispensation had been given. Mr Williams for the Applicant told the Tribunal that the Respondent's flat was virtually reinstated. This was challenged by Mr Newell. He took a video which was sent to the Tribunal after the hearing ( it is not clear if it was sent to the Applicant) he says it showed that the works were a long way from completion. The Tribunal did not inspect and so cannot confirm this although the video appears to show substantial works are still required.

## **The Law**

10. Under s.20ZA of the Landlord and Tenant Act 1985 the tribunal has the jurisdiction to grant dispensation "*if satisfied that it is reasonable to dispense with the requirements*". The main issue in a s.20ZA application is the degree to which the tenant has suffered prejudice by the failure to consult: see *Daejan Investments Ltd v Benson* [2013] UKSC 14. Daejan confirmed that the decision whether to grant dispensation is not a binary decision and can be made conditional.

## **Application to the present case**

11. The works detailed in the application need to be carried out in order to make the building and the premises wind and watertight. The Respondent's flat needs to be reinstated. There has been no attempt at consultation by the Applicant. Nonetheless the Respondent has not suffered prejudice in terms of the lack of consultation because the Applicant has indicated through her solicitors that he would not be charged for either the works to the building or the reinstatement of his flat, although of course he has suffered prejudice generally due to the fact that he has been unable to use his flat for a number of years. The Tribunal was not impressed by the Applicant's solicitor's attempt during the hearing on 31<sup>st</sup> July 2020 to row back from the clear statement that she made at the hearing on 5<sup>th</sup> March 2020.
12. In the unusual circumstances of this case where the Applicant has blithely carried on with works at the building despite this application and where blatantly incorrect factual submissions have been made by her solicitors ( on instruction) in relation to the progress of the works in the Respondent's flat the Tribunal has

determined that it will give dispensation but on condition that the Applicant does not seek to recover any sums for the works to the building as outlined in the application or for the reinstatement of the Respondent's flat.

**Dated this 26<sup>th</sup> day of August 2020**

**Judge Shepherd**